IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7984 of 2003

Between:

1. L.Imthiaz, S/o. L.Lateef Sab, aged 30 years,

Resident of Aryapet, Madakasira, Anantapur Dist.

2. B.Narasappa (Died), S/o. Nanjappa, aged 60 years,

Resident of New Road, Madakasira, Ananthapur Dist.

3. Ayaz, S/o. Late Kareem Sab, aged 36 years,

Resident of Aryapet, Madakasira, Anantapur Dist.

4. .Rahamthulla, S./o.Adam Sab, aged 51 years,

R/o. Pavagada Road, Madakasira, Anantapur Dist.

5. B.Narayanappa, S/o. B.Bhutayya, aged 60 years,

Near Madhugiri Cross, Madakasira, Ananthapur Dist.

6. B.Sivappa, S/o. late B.Narasappa, 45 years, R/o. New

Road, Madakasira, Anantapur Dist.

(Petitioner No.6 brought on record as L.R. of the deceased petitioner

No.2 as per Court order dated 29-12-2004 in

W.P.M.P.No.32117 of 2004)

..... PETITIONERS

AND

1.Gram Panchayat, Madakasira, Anantapur Dist,

Rep. By Village Secretary.

2. Mandal Revenue Officer, Madakasira, Anantapur Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly in the nature of Mandamus declaring the action of the 1st respondent in trying to evict the petitioner as illegal, improper and is in excess of power vested in them, and consequently direct the 1st respondent not to evict the petitioners from the plots of land wherein the petitioners had constructed their thatched sheds & bunks in their house site assigned in an extent of Ac.0-03 cents in favour of each petitioner in Sy.No.416 in Madakasira, Anantapur District.

Counsel for the Petitioner : MR. R.V.SUBBA RAO

Counsel for the Respondent No.1: MR.P.RAGHAVENDRA REDDY,

Counsel for the Respondent No.2: G.P. FOR REVENUE

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.7984 OF 2003

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ORDER :

This writ petition is filed seeking a declaration that the alleged action of the 1st respondent - Gram Panchayat in trying to evict the petitioners as arbitrary and illegal.

The case of the petitioners as stated in the affidavit filed in support of the writ petition is as follows ::

The 1st petitioner is the son of one late L.Lateef Sab who was assigned a house-site to an extent of Ac.0-03 cents in Sy.No.416 of Aryapet Village, Madakasira, Anantapur District. The petitioners 2, 4 and 5 are the sons of the third petitioner who were also assigned similar extents of the land in the same Survey Number. It is

claimed that all the petitioners have constructed thatched sheds and small bunks on the land assigned to them for the purpose of carrying on petty trades as Barbers, Vegetable Vendors, Motor Mechanics etc. It is alleged that the 1st respondent – Gram Panchayat has been threatening the petitioners to vacate the sites in their possession proclaiming that the said land is in the custody of the Gram Panchayat. The petitioners plead that the said version of the Gram Panchayat is incorrect and without any basis and the Village Secretary of the Gram Panchayat who is inimically disposed against the petitioners has been deliberately taking steps to dispossess the petitioners high-handedly in spite of the fact that the pattas granted in their favour are subsisting. Hence, this writ petition seeking a declaration that the action of the first respondent is arbitrary and illegal.

This Court while directing Rule Nisi, by order dated 6-5-2003 ordered that the petitioners shall not be evicted from the plots in their possession except in accordance with law.

Subsequently, on behalf of the 1st respondent – Gram Panchayat, a counter-affidavit has been filed by the Panchayat Secretary stating that the petitioners are not in possession of the land in Sy.No.416 of Madakasira Village and Mandal, Anantapur District and no pattas were granted to them in Sy.No.416 in the year 1986 or at any time thereafter. The plea of the petitioners that they have erected bunks and thatched sheds and have been in occupation of the land in Sy.No.416 and that the 1st respondent has been threatening to evict them has been denied and it is stated that the 1st respondent filed a caveat in the Court of the Junior Civil Judge, Madakasira in respect of Sy.No.414/4 to an extent of Ac.1.15 cents which is classified as 'Village Site Poramboke' and being used as 'weekly market area' under the control of the Gram Panchayat. The petitioners have no right whatsoever over the said land in Sy.No.414/4. It is further stated that there are no bunks in Sy.No.416, but some bunks were installed in Sy.No.414/3 of Madakasira and therefore steps are being taken to evict them following due process of law.

In view of the stand taken by the 1st respondent, this Court by order dated 24-11-2003 directed the Revenue Divisional Officer, Penukonda to enquire into the

matter and submit a report to this Court regarding the claim of the petitioners that they were granted pattas in Sy.No.416 of Madakasira in the year 1986, after issuing notices to the petitioners as well as to the Gram Panchayat. In pursuance thereof, the Revenue Divisional Officer submitted his report dated 5-10-2004 stating that he has inspected Sy.No.416 on 5-10-2004 which is classified as 'Village Site Poramboke'. During his inspection, he did not find any thatched houses or bunks existing in Sy.No.416 as claimed by the petitioners, but it was found that the petitioners have encroached into Sy.No.414 and erected bunks thereon for the purpose of petty trades like cycle repairs, barber shops, welding shops etc. They are not residing in the said Survey Number and they informed the Revenue Divisional Officer that they have been residing elsewhere and that they are only carrying on petty trades in the sites in their occupation in Sy.No.414. The Revenue Divisional Officer has also stated that so far as Sy.No.416 is concerned, the petitioners did not produce any material to show that they were granted house sites, but requested three months time stating that the relevant record is with their Advocate at Hyderabad. It is further stated that Sy.No.416 is classified as 'Village Site Poramboke' wherein the Gram Panchayat has recently constructed a shopping complex for improving their funds and allotted the same to the businessmen. It is further stated that on verification of the records in the office of the Mandal Revenue Officer and on a perusal of the House Site Grant Register, it was found that no pattas were issued in Sy.No.416 of Madakasira village during the year 1986 and no changes were carried out in the village records. Thus, the Revenue Divisional Officer concluded that the claim of the petitioners that they were granted house sites in Sy.No.416 is not correct and that as a matter of fact they are in possession of land in Sy.No.414 by encroaching upon the same and by erecting small bunks.

A separate counter-affidavit has been filed on behalf of the 2nd respondent – Mandal Revenue Officer, Madakasira Mandal stating that no assignment was made in Sy.No.416 at any point of time in favour of the petitioners as claimed by them. It is also stated that there are no bunks and thatched sheds in Sy.No.416 which is classified as 'Village Site Poramboke' in the revenue records and that the documents filed by the petitioner are false and fabricated. It is explained that the documents filed by the petitioners showing that as if separate files have been opened for each plot for the assignment made in the year 1986 are all false and fabricated. It is not the practice in the Revenue Department to maintain separate files

when Assignments are made for several plots. For all the house site plots granted at one time, a single file will be opened. As such, the documents filed by the petitioners are fabricated and no record was found in the office of the Mandal Revenue Officer with regard to the said assignments. It is also stated that the petitioners are not in possession nor carrying on any business in Sy.No.416 and therefore the writ petition is misconceived and liable to be dismissed in limine.

I have heard the learned Counsel for both the parties and perused the material on record.

The petitioners filed affidavit in Reply disputing the stand taken by the respondents that the petitioners were never assigned any land in Sy.No.416 and the learned Counsel for the petitioners placed much reliance upon the copies of the orders of assignments filed along with the writ petition. However, in view of the specific stand taken by the 2nd respondent – Mandal Revenue Officer, stating that as per the Revenue Records, no such assignments were ever granted and that the documents produced by the petitioner are all fabricated and fictitious, I am not inclined to take the said pattas into consideration for the purpose of granting the relief prayed in this writ petition. The Revenue Divisional Officer who has submitted a report in compliance with the order of this Court dated 24-11-2003 on verification of the revenue records also states that so far as Sy.No.416 is concerned no assignments were granted as claimed by the petitioners. If the petitioners dispute the said report, it is for them to work out the appropriate remedy and to establish their title under the pattas in question, but this Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot enquire into such disputed questions and adjudicate upon the right and title of the petitioners.

It is also relevant to note that on inspection of the land in question, the Revenue Divisional Officer states that the petitioners are not in possession of any part of the land in Sy.No.416. However, it is stated that they have encroached upon small extents of land in Sy.No.414 and having erected small bunks, they have been carrying on petty trades. Thus, it is clear that the version of the petitioners on the basis of which this writ petition is filed is false and without any basis and therefore

no writ of Mandamus as prayed for can be granted. However, keeping in view the fact that the petitioners are in physical possession of small extents of land in Sy.No.414, which fact has been confirmed by the Revenue Divisional Officer and particularly in view of the fact that the said Sy.No.414 has been classified as “Government Poramboke”, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioners to make appropriate applications before the competent authority seeking assignment of the lands in their occupation. If any such applications are made within a period of four weeks from today, the same shall be considered and appropriate orders be passed in accordance with law by the competent authority. Till such orders are passed, the respondents are directed not to interfere with the possession of the petitioners in respect of the bunks in question situated in Sy.No.414 of Madakasira village.

The Writ Petition is accordingly disposed of. No costs.

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23rd March, 2005.

gbs

To

1.The Village Secretary, Gram Panchayat, Madakasira, Anantapur Dist.

2. The Mandal Revenue Officer, Madakasira, Anantapur Dist.

3. Two CCs to G.P. for Revenue, High Court of AP Bldgs, Hyderabad (OUT).

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